

**Cedars Nursing Center, Inc., a Chartwell Entity and Teamsters Local No. 610, affiliated with International Brotherhood of Teamsters, AFL-CIO.**  
Cases 14-CA-25109 and 14-CA-25181(1-2)

January 29, 1999

**DECISION AND ORDER**

BY MEMBERS FOX, LIEBMAN, AND BRAME

Upon charges and amended charges filed by the Union on May 13, July 1 and 21, and September 28, 1998, the Acting General Counsel of the National Labor Relations Board issued an order consolidating cases, consolidated complaint and notice of hearing on September 29, 1998 against Cedars Nursing Center, Inc., a Chartwell Entity, the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charges, amended charges and consolidated complaint, the Respondent failed to file an answer.

On December 11, 1998, the General Counsel filed a Motion for Summary Judgment with the Board. On December 14, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the consolidated complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, despite having been notified by the Respondent by telephone that it would most likely not file an answer, by letter dated October 27, 1998, notified the Respondent that unless an answer were received by November 5, 1998, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a corporation authorized to do business under the laws of the State of Missouri, with an office and place of business located in Cedar Hill, Missouri, has been engaged in the operation of a nursing home. During the 12-month period ending

July 31, 1998, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$100,000, and purchased and received at its Cedar Hill, Missouri facility goods valued in excess of \$5000 directly from points outside the State of Missouri.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

About December 1997, the Respondent issued a written warning to its employee Louise Eaton. About May 7, 1998, the Respondent discharged its employee Diane Coke. About July 17, 1998, the Respondent discharged its employee Louise Eaton.

The Respondent engaged in this conduct described above because the named employees formed, joined, and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees in nursing services, including restorative aides, housekeeping, laundry and food service employees and activity program employees employed by the Employer at its Cedar Hill, Missouri facility, EXCLUDING registered nurses, licensed practical nurses, office clerical and professional employees, guards and supervisors as defined in the Act.

On January 23, 1998, a representation election was conducted among the employees in the unit, and on May 7, 1998, the Union was certified as the exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. At all times since May 7, 1998, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About April 1, 1998, the Respondent put a new health insurance plan into effect. The subject set forth above relates to wages, hours, and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining. The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

**CONCLUSIONS OF LAW**

By the acts and conduct described above, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices

affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by issuing a written warning to Louise Eaton and by discharging Louise Eaton and Diane Coke, we shall order the Respondent to offer the discriminatees full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful warning and discharges, and to notify the discriminatees in writing that this has been done.

In addition, having found that the Respondent has been violating Section 8(a)(5) and (1) by putting into effect a new health insurance plan, we shall order the Respondent, on request by the Union, to rescind the unlawfully implemented plan. However, our Order should not be construed as requiring the Respondent to rescind the health insurance plan without a request from the Union. See *Elias Mallouk Realty Corp.*, 265 NLRB 1225 fn. 3 (1982).<sup>1</sup>

#### ORDER

The National Labor Relations Board orders that the Respondent, Cedars Nursing Center, Inc., a Chartwell Entity, Cedar Hill, Missouri, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

<sup>1</sup> As part of the remedy for the unilateral change violation, the General Counsel requests in the complaint that the Respondent be ordered to bargain in good faith with the Union, on request, for the period required by *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). However, the complaint does not allege that the Respondent generally failed or refused to recognize the Union or to meet and bargain with the Union in good faith following its certification, and there is no indication how the Respondent's unilateral change affected the parties' negotiations. Accordingly, we find the requested *Mar-Jac* remedy to be inappropriate. *Cortland Transit*, 324 NLRB 372 (1997).

(a) Issuing written warnings to employees and discharging them because they join or assist Teamsters Local No. 610, affiliated with International Brotherhood of Teamsters, AFL-CIO, and engage in concerted activities and to discourage employees from engaging in these activities.

(b) Putting into effect a new health insurance plan without prior notice to the Union as the exclusive representative of the employees in the following unit and without affording the Union an opportunity to bargain effectively with respect to this conduct. The unit is:

All employees in nursing services, including restorative aides, housekeeping, laundry and food service employees and activity program employees employed by the Employer at its Cedar Hill, Missouri facility, EXCLUDING registered nurses, licensed practical nurses, office clerical and professional employees, guards and supervisors as defined in the Act.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request by the Union, rescind the unlawfully implemented health insurance plan.

(b) Within 14 days from the date of this Order, offer Louise Eaton and Diane Coke full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(c) Make Louise Eaton and Diane Coke whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest, in the manner set forth in the remedy section of this decision.

(d) Within 14 days from the date of this Order, remove from its files any references to the unlawful discharges of Louise Eaton and Diane Coke, and the unlawful warning issued to Eaton, and within 3 days thereafter notify them in writing that this has been done and that the warning and discharges will not be used against them in any way.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Cedar Hill, Missouri, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 1997.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

#### APPENDIX

#### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT issue written warnings to you and discharge you because you join or assist Teamsters Local No. 610, affiliated with International Brotherhood of Teamsters, AFL-CIO, and engage in concerted activities and WE WILL NOT discourage you from engaging in these activities.

WE WILL NOT put into effect a new health insurance plan without prior notice to the Union as the exclusive representative of the employees in the following unit and without affording the Union an opportunity to bargain effectively with respect to this conduct. The unit is:

All employees in nursing services, including restorative aides, housekeeping, laundry and food service employees and activity program employees employed by us at our Cedar Hill, Missouri facility, EXCLUDING registered nurses, licensed practical nurses, office clerical and professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

We will, on request by the Union, rescind the unlawfully implemented health insurance plan.

WE WILL, within 14 days from the date of this Order, offer Louise Eaton and Diane Coke full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Louise Eaton and Diane Coke whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest.

WE WILL, within 14 days from the date of this Order, remove from our files any references to the unlawful discharges of Louise Eaton and Diane Coke, and the unlawful warning issued to Eaton, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the warning and discharges will not be used against them in any way.

CEDARS NURSING CENTER, INC., A  
CHARTWELL ENTITY